

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ESTATE OF GEORGETTE WEILER,	:	CIVIL ACTION
DECEASED	:	
	:	
v.	:	
	:	
NORTHERN HEALTH FACILITIES,	:	
INC. d/b/a LANGHORNE GARDENS	:	
REHABILITATION AND NURSING	:	
CENTER	:	No. 99-6319

ORDER-MEMORANDUM

AND NOW, this 7th day of June, 2000, the motion of plaintiff Estate of Georgette Weiler, deceased, to amend the complaint is denied in part and granted in part. Fed. R. Civ. P. 15.

On November 12, 1999, Georgette Weiler¹ filed a complaint in the Court of Common Pleas of Bucks County, Pa. asserting negligent care by defendant Northern Health Facilities, Inc., d/b/a Langhorne Gardens Rehabilitation and Nursing Center. The complaint alleges that on November 25, 1997, plaintiff sustained injuries when defendant failed to prevent her from falling out of bed. On December 10, 1999, defendant removed the action based on diversity jurisdiction. 28 U.S.C. § 1332. Plaintiff estate now moves for leave to amend the complaint to include all negligent acts from July 1997 (when its decedent moved into defendant's facility) to May 1999 (when she left).

Under Pennsylvania law, personal injury actions are subject to a two-year statute of limitations. 42 Pa. C.S. § 5524. Unless the new claims in the

¹ She died in December, 1999, a suggestion of death was filed on April 14, 2000, and her estate was substituted as plaintiff.

amended complaint that predate the motion by more than two years “relate back” to the original complaint, they will be barred. Fed. R. Civ. P. 15(c). Under Rule 15(c):

An amendment of a pleading relates back to the date of the original pleading when
(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading . . .

While amendments of a complaint are to be liberally allowed, Fed. R. Civ. P. 15(a), several factors must be balanced to account for potential prejudice to a defendant — whether defendant had notice of the new claims, whether such claims involve the same evidence, and whether defendant will be unfairly surprised. 3 James W. Moore et al., *Moore’s Federal Practice* § 15.19[2] (3d ed. 1999). See also Nelson v. County of Alleghany, 60 F.3d 1010, 1014 (3d Cir. 1995) (“[T]he relation-back rule requires plaintiffs to show that the already commenced action sufficiently embraces the amended claims so that defendants are not unfairly prejudiced by these late-coming [claims] and that plaintiffs have not slept on their rights.”).

Here, plaintiff estate moves to amend to include all negligent treatment purportedly received by its decedent while a resident at defendant’s facility.² Defendant, however, was put on notice of only two additional claims included in the

² The proposed amended complaint includes the following acts of negligence not included in the original complaint: allowing plaintiff’s decedent to fall from her bed more than once, ¶ 6; failing to change her diaper, ¶ 8; leaving her in a wheelchair for long periods, *id.*; overmedicating her, *id.*; failing to provide proper nutrients and nourishment, *id.*; failing to provide proper hygiene and care, *id.*; and physical abuse, *id.* The original complaint makes reference only to the fall that occurred on November 25, 1997. Compl. at ¶¶ 8, 9. The complaint speaks of the incident as “this accident” and does not allude to a general lack care received while a resident. *Id.* at ¶¶ 19-26.

amended complaint and would be prejudiced by the inclusion of the other claims at this late date.³ On March 15, 2000 at the initial Rule 16 conference, a discovery deadline was fixed for May 2, 2000, the date of the second Rule 16 conference. Not until the second conference was the subject of the proposed amendment raised. The amended complaint would expand the scope of the original action beyond the claims that “arise out of the same conduct, transaction, or occurrence.” Fed. R. Civ. P. 15(c).

Therefore, plaintiff will be granted leave to amend the complaint only as to the two claims of which defendant had received previous notice by letter to its insurance carrier, pl.’s mem. at ex. B.⁴ Counsel are directed to expedite any further discovery.

Edmund V. Ludwig, J.

³ Specifically, defendant had no notice that claims would be made based on conditions and events described in the amended complaint, except by a letter sent to defendant’s insurance company on October 20, 1999. Pl.’s mem. at ex. B. However, that letter refers only to three specific dates and incidents: November 27, 1997 (fall alleged in the original complaint), March 12, 1998 (wheelchair injury), and April 9, 1998 (another fall). *Id.*

⁴ Given the case management history and plaintiff’s delay, the motion to amend could well be denied in its entirety; however, in the interests of fairness, plaintiff will be allowed to amend to include those claims as to which its insurance carrier had received notice.